

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.462 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Rajyashree Gupta wife of Dr. Rakesh Kumar Raju, resident of Mohalla - Belwarganj, P.S.- Alamganj, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Govt. of Bihar, Patna
2. The Home Secretary, Bihar, Patna-1
3. Mr. Manu Maharaj (I.P.S.), the then Senior Superintendent of Police, Patna.
4. Mr. Jayant Kant (I.P.S.), the then City Superintendent of Police, Patna.
5. Smt. Sunita Kumari, the then Sub-Divisional Police Officer, Fatuha, Patna.
6. Mr. Khalikuzawan, Sub Inspector of Police at present posted at Patna District Police Head Quarter under Superintendent of Police, Patna.
7. Sweta Gupta, Sub Inspector of Police, at present posted at Purnea District Police Station.
8. Ram Kalyan Yadav, the then Sub Inspector of Police, Alamganj Police Station, Patna.
9. The Union of India through Ministry of Home, New Delhi.
10. The S.D.P.O., Patnacity.
11. Mr. Sushil M. Khopde (I.P.S.), the then Inspector General of Police, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Tarun Kumar Sinha, Advocate
For the Respondent/s : Mr. Rajiv Roy, G.P.-5
Mr. Suresh Kumar, A.C. to G.P.-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-05-2016

The petitioner has preferred the present application for direction to the respondents for proper enquiry in connection with Alamganj P.S. Case No.196 of 2012 lodged by her husband.

2. The grievance of the petitioner is that she is the victim of an offence of attempt to commit rape but her statement which was recorded by the respondent no.5 on 1.3.2013 has not been made a part

of the case diary in connection with Alamganj P.S.Case No.196 of 2012.

3. It has been contended by the learned counsel for the petitioner that in view of Section 172 of the Code of Criminal Procedure (for short "CrPC), it was mandatory for the police officer to enter the statement of the petitioner in the case diary.

4. Learned counsel for the State has contended that the petition has been filed by suppressing several relevant facts. As a matter of fact, the husband of the petitioner Dr. Rakesh Kumar Raju had lodged Alamganj P.S.Case No.196 of 2012 under Sections 453 and 497 of the Indian Penal Code (for short "the Code") alleging illegal trespass and adultery with his wife against his cousin brother Dr. Rajesh Kumar. In the said case the statement of the petitioner was recorded in paragraph 73 of the case diary by the Sub Divisional Police Officer, Fatuha, under the order of Superintendent of Police, Patna, which has been maintained in the record of Alamganj P.S.Case No.196 of 2012 and was sent to the court below by filing report under Section 173 of the CrPC.

5. He has further contended that on conclusion of investigation charge-sheet was submitted against Dr. Rajesh Kumar on 22nd July, 2013 vide charge-sheet no.160/2013 under Sections 448 and 354 of the Code and cognizance was taken by the court of



jurisdictional Magistrate on 26th July, 2013. At the stage of framing of charge, the learned Additional Chief Judicial Magistrate, Patna City considered the petition dated 27th January, 2015 filed under Section 239 of the CrPC by the accused Dr. Rajesh Kumar and vide order dated 17th April, 2015 having found no ground for framing of charges against him, allowed the discharge petition. He has further contended that the husband of the petitioner, namely, Rakesh Kumar Raju preferred Cr. Revision No.425 of 2015 before this Court against the order passed by the learned Additional Chief Judicial Magistrate, Patna City which was heard and disposed of by a Bench of this Court vide order dated 3.9.2015 with observation that in the interest of justice, since the protest petition is pending, the court below is directed to proceed with the same in accordance with law. Accordingly, the protest petition was later taken up by learned Additional Chief Judicial Magistrate, Patna City as complaint and vide order dated 9.12.2015 the said complaint petition was also rejected. He has further submitted that the petitioner ought to have brought all these facts to the notice of this Court for proper adjudication of the matter. The material facts have deliberately been suppressed by the petitioner.

6. I have heard respective counsel for the parties and perused the materials available on record.



7. A perusal of the FIR as contained in anneure-1 to the present application would make it evident that the petitioner was not in the category of victim rather allegation against her was that of being in objectionable position with the accused Dr. Rajesh Kumar. I also find force in the submission of the learned counsel for the State that several material facts have deliberately been not brought to the notice of this Court by the petitioner. The present writ petition has been filed on 5th May, 2015. As noted above, on completion of investigation of Alamganj P.S.Case No.196 of 2012 the investigating officer had already submitted report under Section 173(2) of the CrPC on 22nd July, 2013 and the jurisdictional Magistrate had taken cognizance of the offence on 26th July, 2013. The application for discharge filed by the accused Dr. Rajesh Kumar dated 27th January, 2015 was allowed by learned Chief Judicial Magistrate, Patna City on 17th April, 2015, that is, more than twenty days prior to the filing of the present writ petition. In fairness of the matter, the petitioner ought to have brought these facts to the notice of the court while filing the writ petition.

8. Apparently, the petitioner has not approached this Court with clean hands as relevant facts have deliberately been suppressed from the Court in order to obtain a favourable order. Moreover, even on merits, this Court is of the opinion that the petitioner has got no

case. The police report submitted under Section 173(2) CrPC has been considered by the jurisdictional Magistrate at two stages. Firstly, at the time of taking cognizance of the offence and secondly, at the time of consideration of the application under Section 239 of the CrPC. The order of discharge passed under Section 239 of the CrPC by the learned Additional Chief Judicial Magistrate, Patna City, has not been interfered with by this Court in revisional jurisdiction. Furthermore, even the complaint of the petitioner has been dismissed by the Magistrate. At this belated stage, no relief can be granted to the petitioner.

9. Accordingly, the application, being devoid of any merit, is, hereby, dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	4.5.2016
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